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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/403,131

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Jens Eckermann

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6871

7590

04/24/2003

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EXAMINER

HARMON, CHRISTOPHER R

ART UNIT

PAPER NUMBER

3721

DATE MAILED: 04/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/403,131

Applicant(s)

ECKERMANN ET AL. *Ch*

Examiner

Christopher R Harmon

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 March 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 4-6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 7-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.                      6) ☐ Other:

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of claims 1-3, 7-19 in Paper No. 18 is acknowledged.

Claims 4-6 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 18.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 3, 8, 10-12, 14-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 recites the limitation "the lateral walls" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 the limitation "the multi-piece packagings are releasably fastened in a position which with respect to their final position in the closed transport boxes is displaced towards the openings thereof" is confusing and indefinite.

Furthermore, claim 8 recites the limitation "their final position" in lines 3 and 5. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 recites "preferably at the upper edges". This is considered indefinite since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired.

Claim 10 recites the limitation "at their side walls" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 11 is unclear and should be positively recited as a method step.

Claim 14 recites, "by which means these are set up". It is unclear what "these" refers to ie. multi-piece packagings, end regions, inner bearing walls, boxes, etc.

Claim 15 recites "are set up by folding away" and indefinite language "where appropriate". It is unclear as to the direction meant by "away".

Claims 16 and 17 use the incorrect form of the alternative. Again the use of "on setting up these" (claim 16, last line) is unclear and confusing.

Claims 18 and 19 are confusing and indefinite. Note that method claims should include method steps positively recited. For example, modification of claim 19 might read: A method according to claim 1, in which box lid flaps are closed after the containers are inserted.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3721

5. Claims 1-3, 8-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Stout (US 5,826,783).

Stout discloses a method for packing containers by releasably fastening a multi-piece packaging 92 (adhering) to a flat lying blank 10. The combined structure undergoes folding and gluing operations and formed into a collapsed tubular blank. The blanks are then set up or erected and containers are placed in the erected structure through either side openings. End flaps 65 and 76 are closed over the openings; see figures 4, 7, and 8. Lateral walls 22, 18, 14, 12 are hinged to one another and folded about fold lines of sidewalls 44 and 48. Stout discloses removing the multi-piece packaging 92; see column 4, lines 45-53.

Regarding claims 9-10, multi-piece packaging is releasably fastened on lid flaps 30 and 68. Sidewalls 96 and 98 of the multi-piece packaging 92 are fastened to the transport box.

Perforation lines permit tabs 112 to be torn and removed.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stout (US 5,826,783).

Stout does not directly disclose stacking the flat lying blanks and withdrawing one. However, Stout discloses the forming of the blanks with the multi-piece packaging or compartment units fastened thereto into a flattened tubular structure and a loading/insertion process. The examiner takes OFFICIAL NOTICE that at the time the invention was made, it would have been obvious to one of ordinary skill in the art to stack the blanks and subsequently withdraw one for loading because it is well known in the art to make collapsed blanks for stacking and subsequent handling/transport etc. T

**Conclusion**

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R Harmon whose telephone number is 703-308-8643. The examiner can normally be reached on Monday-Thursday from 8-6.
6. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 703-308-2187. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-305-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

ch  
April 18, 2003



**EUGENE KIM  
PRIMARY EXAMINER**